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Attorneys for Defendants **CITY OF LOS ANGELES and ALEJANDRO DOWNEY**

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 GRACIELA HERRERA; and RUBEN
11 ORDAZ,

12 Plaintiffs,

13 vs.

14 CITY OF LOS ANGELES;
15 ALEJANDRO DOWNEY; and DOES 1-
16 10, inclusive,

17 Defendants.

CASE NO. CV16-02719 DSF (SKx)

Honorable Judge: Dale S. Fischer

Honorable Magistrate Judge: Steve Kim

**DEFENDANTS' SPECIAL VERDICT
FORM**

PRE-TRIAL

CONF. DATE: SEPTEMBER 11, 2017

CTRM: 7D, 7TH FLOOR

TIME: 3:00 P.M.

TRIAL

DATE: OCTOBER 3, 2017

CTRM: 7D, 7TH FLOOR

TIME: 8:30 A.M.

24 **TO THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS AND**
25 **THEIR ATTORNEYS OF RECORD HEREIN:**

26 ///

27 ///

Pursuant to the U.S.D.C. Local Rules, Rule 16-4, this Court's Standing Order re Civil Trial and the Court's Order dated August 30, 2017, Defendants **CITY OF LOS ANGELES and ALEJANDRO DOWNEY** hereby submit their proposed Special Verdict Form.

Defendants have not included any questions concerning Plaintiffs' state law claims. Should the Court permit Plaintiffs to submit those claims to the jury, Defendants request permission to submit a revised special verdict form.

Dated: September 5, 2017

LAW OFFICES OF DALE K. GALIPO

By: /s/ Eric Valenzuela

DALE K. GALIPO

ERIC VALENZUELA

Attorneys for Plaintiffs **GRACIELA HERRERA and RUBEN ORDAZ**

Dated: September 5, 2017

MICHAEL N. FEUER, City Attorney
THOMAS H. PETERS, Chief Assistant City Attorney
CORY M. BRENT, Assistant City Attorney

By: /s/ Colleen R. Smith

COLLEEN R. SMITH, Deputy City Attorney
Attorneys for Defendants **CITY OF LOS ANGELES and ALEJANDRO DOWNEY**

1 WE, THE JURY in the above-entitled action, unanimously find as follows on the
2 questions submitted to us:

3
4 *QUESTION NO. 1:* Have Plaintiffs proved by a preponderance of the evidence that
5 Defendant Alejandro Downey used unreasonable force against Ruben Herrera in
6 violation of his Fourth Amendment constitutional rights?

7 YES _____ NO _____

8
9 *If you answered “No”, please proceed to Question No. 5.*

10 *If you answered “Yes”, please proceed to Question 2.*

11
12 *QUESTION NO. 2:* If you answered “Yes” to Question No. 1, was the use of
13 unreasonable force a cause of Ruben Herrera’s death?

14 YES _____ NO _____

15
16 *If you answered “No”, please proceed to Question No. 5.*

17 *If you answered “Yes”, please proceed to Question 3.*

18
19 *QUESTION NO. 3:* Have any of the following Plaintiffs proved by a preponderance of
20 the evidence that Defendant Alejandro Downey violated any of the following
21 Plaintiffs’ Fourteenth Amendment Constitutional Rights to a familial association with
22 Ruben Herrera by using unreasonable force to detain him and with an unlawful
23 purpose to harm him?

24 *Answer (check “Yes” or “No”) following the name of each Plaintiff for whom*
25 *you answer “Yes” in response to this Question:*

26
27 Graciela Herrera YES _____ NO _____

28 Ruben Ordaz YES _____ NO _____

1 *If you answered "No" as to each Plaintiff, skip to Question No. 5.*

2 *If you answered "Yes" as to any Plaintiff, proceed to Question No. 4.*

3
4 **QUESTION NO. 4:** For each "Yes" response to Question No. 3, do you find that
5 Plaintiffs have proved that Defendant Alejandro Downey's conduct was the cause of
6 injury to that Plaintiff?

7 *Answer (check "Yes" or "No") following the name of only that Plaintiff for*
8 *whom you answered "Yes" in response to Question 3:*

9
10 Graciela Herrera YES _____ NO _____

11 Ruben Ordaz YES _____ NO _____

12
13 *Please proceed to Question No. 5.*

14
15 **QUESTION 5:** *If you answered "Yes" to Question 2, please answer the following*
16 *question. If you answered "No" to Question 2, please proceed to Question 6. What*
17 *are Ruben Herrera's damages for his pain and suffering? \$ _____*

18
19 *Please proceed to Question 6.*

20
21 **QUESTION NO. 6:** *If you answered "Yes" to Question 4, answer the following*
22 *question. If you answered "No" to Question 4, please proceed to Question 7. What*
23 *are the total amount of Plaintiff Graciela Herrera's damages for the interference with*
24 *her familial relationship with her son under the Fourteenth Amendment?*

25 Total: \$ _____

1 *Please proceed to the Question 7.*

2
3 *QUESTION NO. 7: If you answered "Yes" to Question 4, answer the following*
4 *question. If you answered "No" to Question 4, please proceed to Question 8. What*
5 *are the total amount of Plaintiff Ruben Ordaz's damages for the interference with his*
6 *familial relationship with his son under the Fourteenth Amendment?*

7 Total: \$ _____

8
9 *Please proceed to the Question 8.*

10
11 *QUESTION NO. 8: If you answered "Yes" to Question 2 and/or 4, please answer the*
12 *following question. If you answered "No" to Question 2 and 4, please sign and date*
13 *this verdict form and return it to the Court. Have Plaintiffs proved by a preponderance*
14 *of the evidence that the conduct of Defendant Alejandro Downey was malicious,*
15 *oppressive or in reckless disregard of Ruben Herrera's federal constitutional rights?*

16 YES _____ NO _____

17
18
19 *Please sign and date this verdict form and return it to the Court.*

20
21 Dated: _____

Signed: _____

22 Jury Foreperson
23
24
25
26
27
28

1 **PLAINTIFFS' OBJECTION:**

2 With regard to the Fourteenth Amendment Claim, this does not allow for the
3 jury to first determine if deliberation was possible. Under the law, depending on
4 whether deliberation was possible or not, purpose to harm may not be the applicable
5 standard. Further, since it is undisputed that Decedent died from his gunshot wounds,
6 the language as to causation is confusing. Further, the wrongful damages that
7 Plaintiffs are entitled to under the Fourteenth Amendment include both past and future
8 loss of love, comfort society, etc..., and Defendants verdict form does not reflect this.
9 Finally, Plaintiffs request that this Court exercise supplemental jurisdiction over the
10 state law claims.

11
12
13 **DEFENDANTS' REPLY:**

14 Defendants' proposed verdict form reflects the claims in light of the evidence
15 that will be presented. Defendants contend that Officer Downey did not have time to
16 deliberate and that unlawful purpose to harm is the correct standard.

17 With respect to damages, federal law does not require that damages be
18 separated. This claim is not subject to apportionment, thus there does not need to be
19 more than one blank for damages for each question. Defendants presume that the jury
20 will follow the Court's instructions and make the appropriate decision on damages, if
21 any.

ATTESTATION

Pursuant to L.R. 5-4.3.4(a)(2)(i), I hereby attest that Eric Valenzuela, counsel for Plaintiffs Graciela Herrera and Ruben Ordaz, concurs in the content of this filing and has authorized this filing.

Dated: September 5, 2017

MICHAEL N. FEUER, City Attorney
THOMAS H. PETERS, Chief Assistant City Attorney
CORY M. BRENTE, Assistant City Attorney

By: /s/ Colleen R. Smith
COLLEEN R. SMITH, Deputy City Attorney
Attorneys for Defendants **CITY OF LOS ANGELES**
and ALEJANDRO DOWNEY